

How and when constitutional conventions change in Westminster democracies

Westminster democracies incorporate numerous constitutional conventions – the uncodified, informal rules and practices by which political institutions operate. Nicholas Barry, Narelle Miragliotta and Zim Nwokora identify some key patterns for when and how different types of conventions are modified, and suggest further research is needed to develop a fuller understanding of the dynamics of change for political conventions.



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Although the importance of constitutional conventions in Westminster systems is widely acknowledged, they remain under-explored in contemporary political science. There is useful research, often by constitutional lawyers, examining what constitutional conventions do. But there has been hardly any work exploring how they change over time and what this means for the functioning of a political system as a consequence.

In our recent [paper](#), we take steps to address this gap in the literature. We suggest that there are discernible patterns in how constitutional conventions change over time, and that the properties of different types of conventions shape the nature of the changes that occur.

Triggering convention change

We begin by identifying the various kinds of forces or events that can lead to a change in a convention, namely: a constitutional crisis; a political crisis; institutional reform; changing societal norms; and a national emergency.

A *constitutional crisis* arises when political actors disagree over the fundamentals of a constitution, resulting in the breakdown of the entire constitutional system. Because the institutional arrangements found within established democracies are deeply consolidated and therefore highly resilient constitutional crises are likely to be rare occurrences. Thus, convention change through this mechanism is unlikely.

A *political crisis* arises when there is intense contestation over the meaning, interpretation and even existence of one or more conventions. Political crises can be protracted and hyperbolic, but they do not threaten the legitimacy of the constitutional system. They often demand some kind of political response, and may lead to change in constitutional conventions.

The third category of change-event we identify is *institutional reform*, which is an alteration to the rules and structures of the political system that serves to place stress on existing constitutional and political arrangements. Institutional reform can consist of a large-scale change that ushers in a major alteration to prevailing political arrangements but also smaller, discrete institutional reforms.

A fourth category of change-event is a *shift in longstanding societal and political norms* regarding standards of acceptable political behaviours, habits or routines. Practices once considered appropriate or desirable may be found wanting to the extent that they are either no longer considered worthy of observance or demand some kind of response by political actors to address any perceived absence.

The final category of change-event is an *emergency situation* which arises as a result of 'perceptions of urgency caused by facts on the ground or by the way that people perceive those facts' ([Levinson & Balkan 2009, 716](#)). We propose that an 'emergency' is less likely to create enduring preconditions for change and, at best, might lead to a temporary abeyance in the observance of a convention.

The types of change trajectory

If these events generate sufficient momentum or disquiet, they can lead to change in a convention. More specifically, a convention can change in five possible ways:

1. There can be *modification to its content*, if the convention's substantive requirements transform.
2. The convention may experience a *change of status*, if its constitutional significance rises (or falls) or there is some change in the extent of agreement over its meaning or implications.
3. A *change in form* can occur when a convention is formalised in a soft form (for example, a written agreement) or in hard form (for example, in an official rule-book, such as a cabinet manual, or an entrenched constitution).
4. The *death*, or collapse, of a convention may occur because of a gradual decline in observance of the convention over a long period of time or an institutional reform that renders the convention redundant.
5. A majority of political actors may come to view existing constitutional provisions or practices as impractical or anachronistic, leading to the emergence, or *birth*, of new and more-up-to-date conventions.

Which of these outcomes is produced depends, we argue, on the intrinsic properties of the conventions under stress. We used [Andrew Heard's](#) (1989) typology to classify the properties of conventions because it provides the most systematic account in the existing literature. Heard identifies five types of conventions, classifying them based on their importance, and the level of agreement over them (in both principle and practice):

- *Fundamental conventions* have a 'high' level of constitutional importance and also a 'high' level of agreement in principle and practice.
- *Meso-conventions* are critically important to the operation of the political system, and garner broad agreement at the level of principle, but frequently generate disputes when applied in particular cases.
- *Semi-conventions* tend to be more prescriptive in their requirements than meso-conventions, but less important to the operation of the system. There is generally a high degree of consensus among political actors over meso-conventions at the level of principle, but disagreement over how they should be applied in practice.
- *Infra-conventions* are similar to semi-conventions in being of moderate importance to the system. However, there is a lack of consensus over their existence at the level of principle.
- *Usage* refers to a convention-like rule with only minor – or 'trivial' – political significance.

The dynamics of convention change

The three typologies presented above relate to each other, we argue. In particular, the nature of a change event and the intrinsic properties of a convention interact to generate convention change of a particular type. This 'formula' is no more than probabilistic, but it captures our view that the dynamics of constitutional conventions are not wholly mysterious.

We argue, for example, that infra-conventions are the most likely kind of convention to disappear altogether – because there is disagreement about them (and they are not essential to the functioning of the constitutional system) – while this is unlikely in the case of fundamental conventions and meso-conventions. Semi-conventions fall somewhere in between these poles.

When it comes to the status of conventions, fundamental conventions and meso-conventions are relatively unlikely to change because of their importance to the system, which means such a change would be highly disruptive. In contrast, the lesser importance of semi-conventions means that they are more liable to change. If agreement over these conventions breaks down, and they become infra-conventions, this is unlikely to cause much disruption to the system.

Although it is relatively rare for conventions to change form, when hard codification occurs, it is most likely to involve fundamental conventions or meso-conventions, precisely because of their importance to the system and the fact there is a high level of agreement over them at the level of principle. In contrast, semi-conventions are less likely to be codified because they are less important to the system.

The critical importance of fundamental conventions to the system, and the high degree of consensus over their practical implications, means their content is unlikely to change. Meso-conventions, while important, are relatively flexible in their practical implications, which means they have a greater propensity to change in content. In contrast, semi-conventions are highly specific, which suggests that they are more likely to disappear altogether than to change in content.

Our article aims to sharpen our understanding of the ways in which constitutional conventions can change, and to tentatively explore some of the possible links between the nature of particular conventions and their propensity to change. Further theoretical and empirical work is needed to test these links and further refine our approach. Nonetheless, our efforts are a first attempt to map the dynamic properties of constitutional conventions and, in doing so, broaden the focus of scholarly inquiry from strictly conceptual and functional questions about the role and force of conventions to more systematic analysis of their propensity to change.

*This article gives the views of the authors, and not the position of Democratic Audit. It draws on the authors' article [‘The Dynamics of Constitutional Conventions in Westminster Democracies’](#), published in *Parliamentary Affairs*.*

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